QUESTIONS PRESENTED

1. Should the language of the venue provision in Section 2 of the Automobile Dealers' Day in Court Act be interpreted in the same way as identical or similar language in the other venue provisions of the antitrust laws?

2. In actions against corporations under the Dealers' Act, is venue governed exclusively by Section 2 of that Act or is the general federal venue provision for corporations, 28 U.S.C. § 1391(c), also applicable?

3. Does Section 2 of the Dealers' Act control the personal jurisdiction of the district courts in actions authorized by that Section?

4. Can a corporation, which has no contact with a forum except through a sales agreement with an independent distributor therein, be sued and served in that forum on a cause of action unrelated to that contact?

5. Does Fed. R. Civ. P. 4(d)(7), authorizing service "in the manner prescribed" by local law, make local law applicable to the question of amenability to service as well as to the mere method of service?

STATUTES AND RULES INVOLVED

Statutes:

Automobile Dealers' Day in Court Act, 70 Stat. 1125 (1956), 15 U.S.C. §§ 1221 *et seq.* (1958).

Clayton Act §§ 4, 12, 38 Stat. 731, 736 (1914), 15 U.S.C. §§ 15, 22 (1958).

Sherman Act § 7, 26 Stat. 210 (1890).

28 U.S.C. § 1391 (c) (1948).

D. C. Code, tit. 13, § 13-103 (1951)

Rules:

Fed. R. Civ. P. 4(d)(3) and (7)

The foregoing Statutes and Rules are printed in Appendix B, p. 5a *infra.*

STATEMENT OF THE CASE

The case involves questions of venue and service of process in an action under the Automobile Dealers' Day in Court Act, 70 Stat. 1125 (1956), 15 U.S.C. §§ 1221, *et seq.* (1958), hereinafter sometimes called the "Dealers' Act."

The action was brought in the United States District Court for the District of Columbia. The dealer-plaintiff, Respondent here, is an Alabama corporation (R. 3). The Petitioner, named as a defendant, is a New York corporation which has not qualified to do business in the District of Columbia (R. 8, 12). The complaint alleges and the record shows no acts by the Petitioner in the District of Columbia (R. 17, 18). The purported service on Petitioner was made in the District of Columbia by delivering a summons and a copy of the complaint within the District of Columbia to a supposed "Agent" of the Petitioner (R. 6).

The plaintiff invoked jurisdiction in the court of first instance on the ground that the amount claimed exceeded Three Thousand Dollars ($3,000), exclusive of interest and costs (R. 3). Against the Petitioner, in Count III of the complaint, the plaintiff also alleged violations of the Dealers' Act.

The other defendants below are the members of a former partnership, Franklin D. Roosevelt, Jr. and Dyke Cullum, which is alleged to have entered into

and breached a Fiat Dealer Sales Agreement with the plaintiff, and a corporation, Roosevelt Automobile Co., Inc., which is alleged to have induced the plaintiff to enter into a second Fiat Dealer Sales Agreement by false and misleading representations (R. 3, 4 and 5). The defendant Roosevelt Automobile Co., Inc. was the successor of said partnership as a distributor of Fiat products, and is hereinafter sometimes called the "Distributor." It had entered into a Distributor Sales Agreement with the Petitioner (R. 23-56). The Distributor is a Delaware corporation with its principal place of business in the District of Columbia (R. 9).

The Petitioner is a subsidiary of FIAT, S.p.A., the Italian automobile manufacturer. It imports and sells Fiat products to ten independent franchised distributors (R. 9, 24). The Petitioner is therefore an "automobile manufacturer" within the definition in the Dealers' Act, 15 U.S.C., § 1221(a). The only claim against Petitioner is stated in Count III of the complaint (R. 5), which alleges that the Petitioner, throughout the negotiations between plaintiff and the other defendants as set forth in Counts I and II, "failed to comply and perform in accordance with the aforesaid dealer sales agreements and otherwise failed to act in good faith, in violation of" the Dealers' Act.

The Petitioner moved to quash the purported service upon Roosevelt as the supposed "Agent" of the Petitioner in the District of Columbia and to dismiss the complaint as to it (R. 7). At the time of the purported service, the Petitioner had no contacts whatsoever with the District of Columbia except through the Distributor, as a result of the Distributor Sales Agreement between them (R. 12, 13). That Agreement was

completely negotiated in New York and signed by both parties there (R. 14). Admittedly, the Petitioner performed no acts in the District of Columbia in any way connected with the plaintiff (R. 17, 18). The sole question, then, was whether the Distributor was, in effect, the Petitioner itself for purposes of venue and service of process. The relevant facts are as follows:

As indicated by its title (R. 23), the Distributor Sales Agreement provides for the sale of Fiat products by the Petitioner to the Distributor, which pays for and owns the products (R. 9, 10, 11, 28, 39, 40). All Fiat automobiles and most spare parts are delivered to the Distributor at port of entry. Title passes upon delivery and payment (R. 40). Some spare parts from Petitioner's New York spare parts depot are shipped in interstate commerce from New York to the District of Columbia (R. 13). No automobiles are ever sold or delivered to the Distributor in the District of Columbia (R. 11, 13).

The Distributor resells the Fiat products which it has bought to dealers in its non-exclusive territory, which includes the District of Columbia, Alabama and other Southeastern states (R. 24, 28, 30). It is to promote the sale of Fiat products vigorously and agressively (R. 28), and help its dealers to render service with respect to Fiat products (R. 29).

The Petitioner must approve dealers before their appointment by the Distributor is effective (R. 17); but the Petitioner cannot appoint a dealer, or require the Distributor to appoint anyone a dealer, and the Petitioner cannot compel the cancellation of an approved dealer's franchise (R. 16).

The Dealer Sales Agreement between the Distributor and a dealer must be approved by the Petitioner

and contain, in substance, certain basic provisions (R. 30-32). The drafting of such agreements is left to the Distributor (R. 16).

The Petitioner's warranty of Fiat products runs only to the Distributor (R. 42) which, in turn, gives its own warranty to the dealers (R. 43, 44).

The Petitioner has no control over the price at which the Distributor or the dealers resell Fiat products. Of course it must suggest retail prices for resales by the dealers, as required by the Automobile Information Disclosure Act, 72 Stat. 325, 15 U.S.C. §§ 1231 *et seq.* (1958) (R. 16, 17).

The Distributor in other basic respects acts entirely free of control by the Petitioner. It determines the time and manner of payment by the dealers, and makes its own allotments of automobiles to them (R. 16, 17). The establishment and equipping of its places of business require the Petitioner's approval in the first instance (R. 29), but the Distributor pays all of its business expenses, retains all profits from the business and bears any losses (R. 17).

The Distributor is required to keep certain financial records which are to be available to the Petitioner (R. 33), and to maintain a minimum net worth and working capital (R. 35). But the Distributor is not financed by the Petitioner. Rather, it is required to be and remain a self-supporting, independent operator.

Similarly, the Distributor is required to employ personnel of a type and caliber sufficient to the successful performance of its undertakings (R. 29). The Petitioner, however, could not control the hiring or firing of the Distributor's employees, or fix their compensa-

tion (R. 17). The Petitioner operates a training school in New York for distributors' and dealers' service mechanics (R. 29, 30), but gives no sales instruction, or other assistance in selling Fiat products, to the Distributor or any of its personnel (R. 15).

As part of its promotion of Fiat products, the Distributor promised to make reasonable use of Petitioner's advertising and sales promotion and merchandising material and to help dealers to utilize the same (R. 28, 29). But in practice the Distributor prepares and pays for its own advertising (R. 13, 37). There is no joint or cooperative advertising (R. 13, 21). The Petitioner exercises no control over the contents of Distributor's advertising (R. 13), and has no right to do so except in the case of deceptive, misleading, unethical or otherwise objectionable advertising (R. 37). And the undertaking not to use misleading or deceptive advertising material is mutually assumed by the Petitioner (R. 37).

Similarly, the Petitioner retains the right to pass upon signs at the Distributor's places of business indicating that they are those of a distributor of Fiat products (R. 35). If Distributor's signs were in fact approved by the Petitioner, the President of Distributor was not aware of it (R. 22).

Even more significant is the fact that the Distributor and dealers are not permitted to use the name "Fiat" in their corporate names, and they do not do so (R. 35, 36). Petitioner's name is not displayed at Distributor's premises or elsewhere in the District of Columbia. Only the trademark "Fiat" is used (R. 22, 23). The same policy is followed with respect to listings in

telephone directories. Petitioner's name does not appear in them at all.*

All of the provisions discussed above are among the normal and necessary provisions of the Sales Agreement with respect to the Distributor's operations which are expressly stated, in Section 16(a) thereof, to be intended "for the protection of the name, trade names, trademarks, goodwill and business" of the Fiat company and the Petitioner (R. 52). In all other respects, the Distributor's operation of its own business, the resale of Fiat products owned by it, was under the exclusive control of the Distributor itself.

Section 16(a) of the Sales Agreement between the Petitioner and the Distributor expressly provides that the Distributor shall not be or represent itself to be an agent or representative of Petitioner, "it being intended that Distributor shall be an independent contractor" (R. 52). Such a provision might carry little weight if the Agreement elsewhere gave the Petitioner the powers which a principal can exercise, and put the Distributor under the degree of control to which an "agent" is subject. But it does not do so. The Agreement establishes the relationship between the two, and is as binding on the Petitioner as on the Distributor. Nowhere in the Sales Agreement is the Petitioner given

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* The Distributor's name, of course, does appear in the alphabetical directory and in the classified directory or "Yellow Pages" (R. 23). In the latter, under "Automobile Dealers", the Distributor and several dealers are listed in a group with the heading "FIAT", the trademark of the products they handle. But nowhere does there appear the name of Petitioner, "Fiat Motor Company, Inc." This alone distinguishes *Maryland ex rel. Chrysler v. Eastern Air Lines, Inc.*, 81 F. Supp. 345 (D.D.C. 1948), cited in note 2 of the Court of Appeals opinion herein, and indicates the irrelevance of that note.

the right continuously to direct the other party in its day-to-day operations, to give one instruction today and a contrary one tomorrow, or to tell the other party at what price and on what other terms the other party shall sell Fiat products as the Petitioner could do if the other party were selling Petitioner's property as the Petitioner's agent.

By contrast, the Sales Agreement between Petitioner and Distributor fixes the rights and duties of the parties in advance with respect to products to be sold by the one to the other.

The Agreement, so to speak, fixes the rules of the game before play begins. It leaves no room for the Petitioner to give the Distributor any instructions from the dugout while the game is in progress.

* * *

The District Court denied Petitioner's motion to quash and dismiss without opinion, and with no indication in its Order as to the reasons for the decision (R. 56, 57). However, pursuant to 72 Stat. 1770, 28 U.S.C. § 1292 (b) (1958), the interlocutory Order did state that it involved "a controlling question of law as to which there is substantial ground for difference of opinion and an immediate appeal from this Order may materially advance the ultimate termination of the litigation"; and the Court of Appeals allowed an appeal from the Order of the District Court (R. 57). The Petitioner appealed (R. 58).

Without deciding what statutory provisions govern the question of the Petitioner's amenability to suit and service in the District of Columbia, the Court of Appeals said that the Distributor's contractual obligations to the Petitioner "manifest a continuing business

relationship involving the supervision and control by [Petitioner] of numerous details of the [Distributor's] business" so that Petitioner was "doing business" there.

This conclusion was reached "whether that issue is considered to be governed by federal or local standards." In applying federal standards "in the absence of controlling federal statute", the Court of Appeals relied on the test of "fair play and substantial justice". The Court then dealt with the possibility that local law governed the situation and held that the Petitioner was also subject to service in the District under their decision in *Carroll Electric Co. v. Freed-Eisemann Radio Corp.*, 60 App. D.C. 228, 50 F. 2d 993 (1931).

On that basis the Court of Appeals affirmed the Order of the District Court.

* * *

It is submitted, on the foregoing facts, that a writ of certiorari should be issued for the reasons which follow.

REASONS FOR GRANTING WRIT

1. The failure of the Court of Appeals to construe the venue provision in Section 2 of the Dealers' Act in accordance with the relevant precedents in the antitrust field raises an important question concerning the administration of a recent federal statute, which has not been, but should be, settled by this Court.

By affirming the District Court's denial of Petitioner's motion, the Court of Appeals necessarily overruled Petitioner's objections to venue. Apparently the Court of Appeals considered that if Petitioner was amenable to service of process in the District of Columbia, as it held, it was also amenable to suit there.

If the decision of the Court of Appeals is sound, every manufacturer which sells automobiles on a

national scale to independent distributors under customary distributor sales agreements is amenable to suit under the Dealers' Act in every judicial district of the nation in which such a distributor is located.*

To Petitioner's knowledge such a result has never been reached in cases decided under the other venue provisions of the antitrust laws. Thus the decision of the Court of Appeals is not only questionable in light of the policies underlying sound and reasonable venue requirements, but it also raises the question of what precedent is relevant to a decision regarding venue in cases under the Dealers' Act. This Court should hear this case on the merits to decide whether or not Section 2 of the Dealers' Act is to be construed in accordance with precedent under the other antitrust venue provisions.

The Dealers' Act is an "Act to supplement the antitrust laws" (Preamble, Appendix B, p. 5a, *infra*). In Section 2, 70 Stat. 1125 (1956), 15 U.S.C. § 1222, it provides that a dealer may bring suit against a manufacturer "in any district court of the United States in the district in which said manufacturer resides, or is found, or has an agent, without respect to the amount in controversy. . . ." Except for the words "said manufacturer", which have been substituted for

* The Court of Appeals' decision, if sound, also logically means that every distributor which sells automobiles in an assigned territory to independent dealers under customary dealer sales agreements is amenable to suit under the Dealers' Act in every judicial district in which such a dealer is located. If so, depending on the theory on which the distributors were deemed amenable to suit, the manufacturer too might be found amenable to suit in every such district, which would mean that most if not all automobile manufacturers and importers would be subject to suit in every judicial district of the nation.

the words "the defendant", the quoted language is identical with that in Section 4 of the Clayton Act, 38 Stat. 731 (1914), 15 U.S.C. § 15, which is also a venue provision. Section 4 of the Clayton Act was copied from the language used in Section 7 of the Sherman Act, 26 Stat. 210 (1890), now repealed, which governed both service of process and venue in actions arising under the Sherman Act, *United States* v. *Scophony Corp. of America*, 333 U.S. 795, 804-5 (1948) (dictum), except that the words "or has an agent" were not contained in Section 7. Like Section 4, Section 12 of the Clayton Act, 38 Stat. 736 (1914), 15 U.S.C. § 22, relating to both venue and service of process in antitrust actions against corporations, was written to expand upon the original provisions in Section 7 of the Sherman Act, and the language in the *service* provision of Section 12 is similar to that in Section 7.

Section 2 of the Dealers' Act should be construed in light of the cases interpreting the language of these other similar antitrust provisions.

The word "resides" in these antitrust venue provisions, as in other venue statutes, refers to place of incorporation. See *Suttle* v. *Reich Bros. Construction Co.*, 333 U.S. 163 (1948); *Boston Medical Supply Co.* v. *Brown & Connolly, Inc.*, 98 F. Supp. 13, 14 (D. Mass. 1951), aff'd. *sub. nom. Boston Medical Supply Co.* v. *Lea & Febiger*, 195 F. 2d 853 (1st Cir. 1952). For that reason it is here irrelevant.

The word "found" has a broader meaning. In 1918, four years after Section 4 of the Clayton Act was enacted, this Court construed the word "found" in Section 7 of the Sherman Act. It held that, when applied to a corporation, the word "found" was "the

equivalent of saying that it must be *present* in the district by its *officers and agents* carrying on the business of the corporation. In this way only can a corporation be said to be 'found' within the district. In that manner it may manifest its submission to local jurisdiction and become amenable to local process." *People's Tobacco Co.* v. *American Tobacco Co.*, 246 U.S. 79, 84 (1918) (emphasis supplied). This test has been repeatedly used in construing the word "found" in Sections 4 and 12 of the Clayton Act as well as in Section 7 of the Sherman Act. *Boston Medical Supply Co.* v. *Brown & Connolly, Inc., supra; United States* v. *Aluminum Co. of America*, 20 F. Supp. 1[illegible] (S.D.N.Y. 1937). See *Eastman Kodak Co. of New York* v. *Southern Photo Materials Co.*, 273 U.S. 359, 371 (1927); *United States* v. *Scophony Corp., supra*, 333 U.S. at 805-808.

This Court said in a later case that the words "or has an agent", included for the first time in Section 4 of the Clayton Act, gave Section 4 a broader scope than Section 7 of the Sherman Act, but explicitly refrained from defining its broadened scope. *United States* v. *National City Lines, Inc.*, 334 U.S. 573, 586 (1948). However, decisions in the lower courts have indicated that the added language subjects a corporation to venue if it has "agents" in a particular jurisdiction even though they are not its officers or employees so that the company could be said to be "present" in the jurisdiction itself within the meaning of the *People's Tobacco Co.* test. See *Goldlawr, Inc.* v. *Shubert*, 169 F. Supp. 677 (E.D. Pa. 1958); *Riss & Company, Inc.* v. *Association of Western Railways*, 159 F. Supp. 288 (D.D.C. 1958); *Boston Medical Supply Co.* v. *Brown & Connolly, Inc. supra.* The

Court in the *Riss & Co.* case, *supra*, at 293-95, indicated the boundaries of this rationale. While an "agent" can be a separate entity which is not an employee or "servant" of the principal, nevertheless the definition of agency in 1 *Restatement of the Law of Agency*, Section 1 governs: i.e., "the relationship which results from the manifestation of consent by one person to another that the other shall act on his behalf and subject to his control, and consent by the other so to act".

It is clear that Petitioner is not "found" and does not have an "agent" in the District of Columbia within the meaning of the above cases. Far from conducting business in the District of Columbia of such a substantial character "as to warrant the inference that the corporation has subjected itself to the local jurisdiction", and is "found" there, *People's Tobacco Co.* v. *American Tobacco Co.*, *supra*, 246 U.S. at 87, Petitioner conducts no business at all in the District of Columbia. The uncontradicted record indicates that the visits of its officers or employees to the jurisdiction have been infrequent, casual and isolated, and that most of them have had nothing to do with the Distributor, Roosevelt Automobile Co., Inc. (R. 14). And the Petitioner is not "found" in the District of Columbia merely because it sells cars to a distributor located there. *Le Veeke* v. *Griesedieck Western Brewery Co.*, 233 F.2d 772 (9th Cir. 1956); *Jones* v. *Motorola, Inc.*, 186 F. 2d 707 (2d Cir. 1951) cert. den., 342 U.S. 817 (1951); *De Santa* v. *Nehi Corp.*, 171 F. 2d 696 (2d Cir. 1948); *Dahlberg Co.* v. *American Sound Products, Inc.*, 179 F. Supp. 928 (D. Minn. 1959).

This leaves only the words "has an agent" for consideration. But a holding that the Distributor was

the Petitioner's agent would extend the concept of agency beyond all bounds of reason and relevant precedent. The essence of the "has an agent" test is found in the control exercised by a foreign corporation over its putative agent. See *Goldlawr, Inc.* v. *Shubert, supra,* 169 F. Supp. at 681-2; *Riss & Company, Inc.* v. *Association of Western Railways, supra,* 159 F. Supp. at 293; *cf. Boston Medical Supply Co.* v. *Lea & Febiger, supra; Nordgren* v. *Eris-Northwest,* 15 F.R.D. 453, 456 (D. Minn. 1954); *Venus Wheat Wafers, Inc.* v. *Venus Foods Inc.,* 174 F. Supp. 633, 635 (D. Mass. 1959). The record in this case indicates that Petitioner exercises no control whatsoever over the continuing business operations of the Distributor. Reason and authority indicate it should not be considered the Distributor's "principal".

Compania Embotelladora Carty, S.A. v. *Seven-Up Co.,* 279 F. 2d 175 (5th Cir. 1960) is in the main stream of the decisions concerning the extent of control which must be exercised by a manufacturer over a distributor for the distributor to be deemed to be the manufacturer's agent. It illustrates how excessively far the Court of Appeals travelled from that stream in order to uphold venue in this action. In that case a Cuban corporation attempted to sue a Missouri corporation in Florida by there serving a distributor which bought Seven-Up extract from the Missouri corporation, manufactured the drink, and resold it in bottles to retailers. The factual statement of the case in the opinion is incomplete, but the record indicates that in its exclusive territory agreement the distributor promised, among other things: (1) to use methods of promotion and sale recommended by Seven-Up; (2) to advertise in accordance with plans and discussions with Seven-Up and to get approval from Seven Up

for all advertising not directly acquired from it; (3) to maintain prices to the retail trade at levels desired by Seven-Up; (4) to process the extract in accordance with sanitary conditions recommended by the Missouri corporation; and (5) periodically to send samples of its product to the Missouri corporation for analysis. Technical advice concerning methods of improving and maintaining the quality of the drink was often given by the Missouri corporation and was always followed by the distributor, and sales and technical representatives were often sent to the distributor to give consultation and advice. Despite this dominant control exercised by the defendant over the Florida distributor, the Fifth Circuit correctly held that the distributor was not the defendant's agent for purposes of service. Many other decisions are to the same effect, *e.g.*, *Street & Smith Publications, Inc.* v. *Spikes*, 120 F. 2d 895 (5th Cir. 1941); *Nordgren* v. *Eris-Northwest*, 15 F.R.D. 453 (D. Minn. 1954).

If Congress, in supplementing the antitrust laws by enacting the Dealers' Act, had intended its venue provision to be broader than that of the Clayton Act, it seems reasonable to suppose that Congress would have adopted different language. It could easily have provided, had it wished to do so, that a manufacturer could be sued wherever there was a distributor of its automobiles. This the Congress significantly failed to do.

The decision of the Court of Appeals is, in effect, a holding that the *venue* of a Dealers' Act case is governed by the federal standards of "fair play and substantial justice" which it applied to uphold the service on Petitioner, regardless of Section 2 of the

Act, its predecessors and the cases interpreting them. If allowed to stand, the judgment may create considerable confusion in the administration of a recent federal statute and in the interpretation of the other venue provisions of the antitrust laws. Thus it would be appropriate for this Court to grant certiorari and deal with the venue problem, as it did in *Suttle* v. *Reich Bros. Const. Co., supra,* and in *Fourco Glass Co.* v. *Transmirra Products Corp.*, 353 U.S. 222 (1957).

2. If the Court of Appeals rejected Petitioner's objection to venue because of the general federal corporate venue provision, 28 U.S.C. § 1391(c), its decision conflicts with an applicable decision of this Court and raises important questions concerning venue requirements in actions under the antitrust laws.

It is impossible to determine with certainty the ground for the Court of Appeals' premise that, if the service requirements of general federal law were met, venue requirements were also met. It is theoretically possible that the Court believed that Section 2 of the Dealers' Act is supplemented by the general federal venue provision for corporations, 28 U.S.C. § 1391(*c*) (1948), and that the "doing business" test in that venue section can be equated with the service of process test of "fair play and substantial justice." Petitioner submits that neither of those propositions is sound, but that both present substantial problems of far-reaching significance which it is important for this Court to decide on the merits.

Fourco Glass Co. v. *Transmirra Products Corp., supra,* presented the question of whether 28 U.S.C. § 1400(b) (1948) exclusively governs venue in patent infringement actions, or whether § 1391(*c*) supplements it. This Court held that § 1400(b) applies to

the exclusion of § 1391(*c*). Only Mr. Justice Harlan was persuaded by the argument, endorsed by Prof. Moore, that § 1391(*c*) was intended to supplement all the special federal venue provisions, even § 1400(b) which had previously been construed as exclusive. 353 U. S. at 229 (dissenting opinion); Moore, COMMENTARY ON THE U. S. JUDICIAL CODE, 184-5, 193-4 (1949).

Prior to the *Fourco* decision, some courts had held that Section 4 of the Clayton Act or the venue provision in Section 12 of that Act should be deemed supplemented by § 1391(*c*), *e.g.*, *Anderson-Friberg, Inc.* v. *Justin R. Clary & Son, Inc.*, 98 F. Supp. 75 (S.D.N.Y. 1951); *Lipp* v. *National Screen Service Corp.*, 95 F. Supp. 66 (E.D.Pa. 1950); *Auburn Capitol Theatre* v. *Schine Chain Theatres, Inc.*, 83 F. Supp. 872 (S.D.N.Y. 1949). Such holdings were grounded on the theory that the venue provisions of the antitrust laws were designed to make it easier for plaintiffs to bring defendants into court, *United States* v. *National City Lines, Inc., supra*, 334 U. S. at 586, and were obviously supported by the interpretation of § 1391(*c*) endorsed by Prof. Moore. Whether these decisions retain their vitality after *Fourco* is doubtful. See *R. J. Coulter Funeral Home Inc.* v. *National Burial Ins. Co.*, 192 F. Supp. 522 (E. D. Tenn. 1960); *Kaeppler* v. *James H. Matthews & Co.*, 180 F. Supp. 691 (E.D. Pa. 1960). The Supreme Court should remove this ambiguity, which extends beyond the Dealers' Act and affects corporate venue in a significant number of antitrust actions.

If it should be held that § 1391(*c*) does supplement the specific venue provisions of the antitrust laws, the question of whether the phrase "doing business" in § 1391(*c*) is equivalent to the test of "fair play and

substantial justice" for service of process purposes would then be reached. The meaning of "doing business" in the general corporate venue provision has become a subject of considerable controversy. See 1 Moore, FEDERAL PRACTICE, 1497-1501 (2d ed. 1960).

There is some authority supporting the view that § 1391(c) does in fact incorporate the test set forth by this court for service of process purposes in *International Shoe Co.* v. *Washington*, 326 U.S. 310 (1945). *Ronson Art Metal Works, Inc.* v. *Brown & Bigelow, Inc.*, 104 F. Supp. 716, 721 (S.D.N.Y.), aff'd, 199 F. 2d 760 (2d Cir. 1952); *Sonnier* v. *Time, Inc.*, 172 F. Supp. 576 (W.D. La. 1959); *Wanamaker* v. *Lewis*, 153 F. Supp. 195 (D. Md. 1957); 1 Moore, FEDERAL PRACTICE 1499-1500 (2d ed. 1960). On the other hand a number of decisions have adopted other and more restrictive tests in interpreting this language. Some have regarded the phrase "doing business" in § 1391(c) as a licensing concept: a corporation falls within the venue requirements if it was "doing business" to such a degree that a state could reasonably require that it be licensed. *Rensing* v. *Turner Aviation Corp.*, 166 F. Supp. 790 (N.D. Ill. 1958); *Remington Rand, Inc.* v. *Knapp-Monarch Co.*, 139 F. Supp. 613 (E.D. Pa. 1956). These decisions rely on the decisional background to the passage of § 1391(c) and the gap left by the decision of this Court in *Neirbo Co.* v. *Bethlehem Ship Building Corp.*, 308 U.S. 165 (1939), in situations where corporations did not obtain licenses to do business in a state although it would have been appropriate for them to do so. See 1 MOORE, FEDERAL PRACTICE, *supra*, at 1492. One decision has adopted the "doing business" test which was used prior to the decision in *International Shoe*, reasoning that the language of the statute

which is in identical terms dictates such a result and relying on *Remington Rand, supra* which was considered to establish the same test. *Carter* v. *American Bus Lines, Inc.*, 169 F. Supp. 460 (D. Neb. 1959). Another approach has been to read into "doing business" for venue purposes, under § 1391(c), "a balancing of the inconveniences' test in addition to the general due process requirements associated with the personal jurisdiction question." *Bar's Leaks Western, Inc.* v. *Pollock*, 148 F. Supp. 710, 714 (N.D. Cal. 1957).

The confusion illustrated by the above cases as to the meaning of § 1391(c) presents a situation ripe for the exercise by this Court of its supervisory power over the federal judiciary, and the apparent conflict between the Court of Appeals' decision in this case and the Supreme Court's decision in *Fourco* should be resolved. For the reasons which follow, however, venue was lacking even if § 1391(c) provided an appropriate vehicle for the application of the test of "fair play and substantial justice" to the present case.

3. In holding that Petitioner was amenable to service of process under the standard of "fair play and substantial justice" set forth in International Shoe Co. v. Washington, and subsequently elaborated by this Court, the Court of Appeals misconstrued and misapplied that standard. Its decision conflicts with a decision on the same matter in another Court of Appeals, and raises an important question concerning the personal jurisdiction of the federal district courts which has not been, but should be, decided by this Court.

The Court of Appeals not only erred in rejecting Petitioner's objection to venue, but also in upholding its amenability to service of process in the District of Columbia.

The Court of Appeals relied on general federal standards of "fair play and substantial justice" because it assumed the absence of a controlling statute. Its assumption is questionable. Congress may well have intended the Dealers' Act to be a self-contained statute. See *Schnabel* v. *Volkswagen of America, Inc.*, 185 F. Supp. 122 (N. D. Iowa 1960). It contains its own statute of limitations, Section 3, and in Section 4 indicates that it should not be construed to affect any cause of action otherwise arising under the antitrust laws. In addition, Section 2 of the Dealers' Act creates a new substantive cause of action, invests the district courts with exclusive jurisdiction over it, and prescribes the judicial district in which a dealer may sue thereon. Section 2 of the Dealers' Act is directly traceable through Section 4 of the Clayton Act to Section 7 of the Sherman Act, which was both a service of process and venue provision. *United States* v. *Scophony, supra*, 333 U.S. at 804-5 (dictum). It would appear reasonable similarly to construe Section 2 of the Dealers' Act as governing the problem of personal jurisdiction in dealers' actions under the Act.

If Section 2 of the Dealers' Act governs service of process in the present case, the Court of Appeals erred in upholding service on the Petitioner, for the reasons set forth in the above discussion of Section 2 as a venue provision.

But even if the general federal test of "fair play and substantial justice" governs Petitioner's amenability to service in the present case, the Court of Appeals' decision is erroneous because it misapplied that test; and furthermore it is in conflict with the decision in *L. D. Reeder Contractors of Arizona* v. *Higgins*

Industries, Inc., 265 F. 2d 768 (9th Cir. 1959).* Petitioner has been able to find no decided case which extends the personal jurisdiction of a district court as far as the present one.

The uncontradicted record establishes that "with respect to the claim asserted against Fiat in Count III of the complaint, [Petitioner] performed no acts whatever in the District of Columbia in any way concerning plaintiff [Respondent]. All acts of [Petitioner] concerning plaintiff and relating in any way to the claim made in said Count were performed by [Petitioner] either in New York or in Alabama." (R. 17-18). The complaint does not even allege that Petitioner acted within the District of Columbia.

Thus respondent is not suing on a cause of action which has a "substantial connection" with the jurisdiction, as was the case in *McGee* v. *International Life Ins. Co.*, 355 U.S. 220, 223 (1957). The fact that the alleged cause of action did not arise within the jurisdiction of the district court is obviously relevant to the issue of whether the local activities of the Respondent were sufficient to make local trial fair. *French* v. *Gibbs Corp.*, 189 F. 2d 787 (2d Cir. 1951). This Court acknowledged in *International Shoe* v. *Washington*, *supra*, that "there have been instances in which the *continuous* corporate operations within a state were thought so *substantial* and of such a nature as to justify suit against it on causes of action arising from dealings

* Although the *Reeder* case, like *International Shoe*, concerned jurisdictional limits imposed by the Fourteenth Amendment, the same considerations are applicable in determining the personal jurisdiction of a federal court, limited by Fed. R. Civ. P. 4(f) to the borders of the state in which it sits in the absence of special legislation. *Lone Star Package Car Co.* v. *Baltimore & O. R. Co.*, 212 F. 2d 147, 155 (5th Cir. 1954).

entirety distinct from those activities." 326 U.S. at 318 (emphasis supplied); see *La Vecke v. Griesedieck Western Brewery Co.*, 233 F. 2d 722, 777-8 (9th Cir. 1956). But here Petitioner itself conducted no operations within the jurisdiction; and if the Distributor's operations under its sales agreement with Petitioner can be attributed to Petitioner to any extent whatsoever, then at least, in the interests of certainty, guidelines should be established by this Court as to the extent and nature of the operations which will be regarded as making it fair and just to serve a foreign corporation with process in this type of situation.

Apparently only once since its decision in *International Shoe* has the Supreme Court considered a case presenting this type of fact situation. In *Perkins v. Benguet Consol. Mining Co.*, 342 U.S. 437 (1952), this Court held that a state court could assert jurisdiction over a foreign corporation on the peculiar facts of the case, even though the cause of action there sued upon was unrelated to the activities of that corporation in the state. But that case presented the unusual situation of a foreign corporation which was operating *only* in the forum state, Ohio, due to Japanese occupancy of the jurisdiction of incorporation, the Philippines. Thus Ohio afforded the only forum available to the plaintiff with which the defendant had any connection. "The unavailability of an alternative forum weakens the authority of *Perkins* as support for the general proposition that so long as a corporation is carrying on substantial activities within the state it may be sued on an unrelated cause of action." Developments in the Law-*State Court Jurisdiction*, 73 HARV. L. REV. 909, 932 (1960). And because the defendant's *only* activities were those carried on in Ohio, the case is not help-

ful in defining those "substantial and continuous" activities which are sufficient to support service in a case unrelated to those activities.

The desirability of the Supreme Court's further establishing helpful guidelines is emphasized by the fact that the Circuits are reaching contradictory conclusions in this area on substantially identical facts.

In the *Reeder* case, *supra*, the plaintiff, an Arizona corporation, sued a distributor, a California corporation, and a manufacturer, a Louisiana corporation, in the Southern District of California, seeking damages for breach of contract, breach of warranty and misrepresentation in the furnishing of certain wooden flooring blocks. The plaintiff attempted to serve the manufacturer in California by serving the President of the defendant distributor as the manufacturer's purported agent. The plaintiff alleged that it had purchased the blocks from the distributor after having been induced by the manufacturer to use them. The record indicated that the manufacturer each year shipped at least $1,000,000 worth of merchandise to its distributors in California, one of whom was the defendant, and that it corresponded with those distributors. The distributor involved in the case purchased the manufacturer's products and resold them and was an authorized wholesaler and factory representative of the manufacturer, but had no authority to act as its agent. The Ninth Circuit Court of Appeals pointed out that there was no claim in the record that the allegedly tortious conduct of the manufacturer occurred in California, and that the record affirmatively established that the contract which had resulted from the manufacturer's discussions with the plaintiff was entered into between the plaintiff and the distributor. Because

the record did not show that the manufacturer's activities within California gave rise to any of the causes of action contained in the complaint, and because it did not consider the defendant distributor an agent of the manufacturer, the Court concluded that the manufacturer was not amenable to service in California. It thought that to hold the defendant manufacturer amenable would be to "sanction the filing of suit in any federal district court in the United States in whose geographical area a national distribution of manufactured products was advertised, sold or delivered . . . ." 265 F. 2d *supra*, at 779. By holding Petitioner subject to service in the present case, the District of Columbia Circuit has extended the "fair play and substantial justice" test that far (footnote, p. 11, *supra*).

The error of the Court of Appeals thus raises an important question of federal law which has not been, but should be, decided by this Court in the interests of further clarification of the scope of the jurisdiction of the district courts over foreign corporations.

4. The Court of Appeals' alternative holding that Petitioner was amenable to service of process under local law was necessarily predicated on an interpretation of Fed. R. Civ. P. 4(d)(7) which conflicts with decisions in other circuits and raises an important question concerning the meaning of that Rule which has not been, but should be, settled by this Court.

In upholding the District Court's jurisdiction over Petitioner, the Court of Appeals relied in the alternative on local law, citing its decision in *Carroll Electric Co.* v. *Freed-Eisemann Radio Corp.*, 60 App. D. C. 228, 50 F.2d 993 (1931). The Court of Appeals committed error, which this Court should correct, in looking to local law on the question of amenability to service of process.

The only theory on which the Court of Appeals could have thought such reliance on local law to be proper is that Rule 4(d)(7), Fed. R. Civ. P., allows or compels it, though the opinion is unclear in this respect.* Under Rule 4(d)(7) a foreign corporation can be served with process "in the manner prescribed by the law of the state in which the service is made. . . ." The question is whether or not the Rule requires or even permits the federal courts to apply local law to determine whether a foreign corporation's contacts with the jurisdiction are sufficient to subject it to process there.

There is authority in other circuits that Rule 4(d)(7) does compel reference to state law in determining the standards applicable to the question of "presence". *Florio* v. *Powder Power Tool Corp.*, 248 F.2d 367 (3rd Cir. 1957); *Pulson* v. *American Rolling Mill Co.*, 170 F.2d 193 (1st Cir. 1948). In neither case did the Court focus on or discuss the question of whether amenability to process might not be governed by federal law. Furthermore, these were both diversity of citizenship rather than federal question cases, and should be read in connection with other opinions which have relied on state standards in deciding the "presence" question under the supposed compulsion of *Erie R.R. Co.* v. *Tompkins*, 304 U.S. 64 (1938), without reference to Rule 4(d)(7), *e.g.*, *Canvas Fabricators, Inc.* v. *William E. Hooper & Sons, Inc.*, 199 F.2d 485 (7th Cir. 1952); *Riverbank Laboratories* v. *Hardwood Products Corp.*, 220 F.2d 465 (7th Cir., 1955), rev. *per curiam*, 350 U.S.

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* The Court of Appeals did rely on Rule 4(d)(7) and the first paragraph of D. C. Code, tit. 13, § 13-103 (1951) in considering Petitioner's objection that service had not been made on "an officer, a managing or general agent" as prescribed in Rule 4(d)(3). But that question is distinct from the issue of Petitioner's amenability to service in the District of Columbia.

1003 (1956); see *Partin* v. *Michaels Art Bronze Co.*, 202 F.2d 541 (3rd Cir. 1953).

In direct conflict with *Pulson* and *Florio* (which support the Court of Appeals' interpretation of Rule 4(d)(7)) are two other diversity cases, *Jacobowitz* v. *Thomson*, 141 F.2d 72 (2d Cir. 1944) and *Jaftex Corporation* v. *Randolph Mills, Inc.*, 282 F.2d 508 (2nd Cir. 1960). In *Jaftex*, the Court, per Clark, C. J., said (p. 511):

> "Two of the federal rules are pertinent [4(d)(3) and 4(d)(7)], though it must be noted that they deal with the manner of service upon corporate defendants, rather than with their amenability to process."

Jacobowitz and *Jaftex* are consistent with the traditional approach of the federal courts which regards the question of amenability to service and suit as being governed by uniform federal standards rather than by the differing laws of the several states; *e.g.*, *Barrow Steamship Co.* v. *Kane*, 170 U.S. 100 (1898).

If that approach is sound in diversity cases, it would appear *a fortiori* to be compelling in a case which, like the present one, involves a cause of action based on federal rather than state law. Such a case is *Lone Star Package Car Co.* v. *Baltimore & O.R. Co.*, 212 F.2d 147 (5th Cir. 1954), where the Court found that the jurisdiction of the district court should have been determined without reference to state law. Petitioner has not found one case supporting the decision of the Court of Appeals in this action, that reference can be made to local law for the purpose of determining amenability to process when the action is based on a federal statute.

Further support for the position that federal law controls exclusively is found in the Ninth Circuit. The attitude there is decribed in the district court opinion in *Bar's Leaks Western, Inc.* v. *Pollock*, 148 F. Supp. 710 (N.D. Calif. 1957). The court said (p. 713):

> "However, the Court of Appeals for the Ninth Circuit in recent dicta indicated that it was 'Unnecessary to consider * * * the scope of the California doctrine' even where federal jurisdiction was based on diversity of citizenship, Le Vecke v. Griesedieck Western Brewery Co., 9 Cir., 233 F.2d 772, at page 776, footnote 7, distinguishing Woodworkers Tool Works v. Byrne, 9 Cir., 191 F.2d 667 (a diversity case) from the main case (a removed case) where an exhaustive analysis of the California doctrine was undertaken. At least where jurisdiction is based on 'federal question' grounds, as it is in the case at bar, with the compulsion of the Erie doctrine absent, there appears to be no justification for an acquiescene to state standards and Fourteenth Amendment due process for the purposes of deciding the issue of amenability of the foreign corporation to process, Lone Star Package Car Co. v. Baltimore & Ohio R. Co., supra, 212 F.2d at page 154, and authorities there cited."

The problem concerning the interpretation of Rule 4(d)(7) is appropriate for review by this Court on certiorari. It is significant in terms of the efficient administration of justice in the federal courts, and constantly recurs. Furthermore, the circuits are in conflict in their attempts to resolve it.

CONCLUSION

The case presented by this Petition was determined by both the District Court and the Court of Appeals to involve questions "as to which there is substantial

ground for difference of opinion" the prompt determination of which might "materially advance the ultimate termination of the litigation" (R. 57). This Court has granted certiorari to review non-final judgments concerning venue and jurisdictional questions. *Fourco Glass Co.* v. *Transmirra Products Corp.*, 353 U. S. 222 (1957); *Larson* v. *Domestic & Foreign Commerce Corp.*, 337 U.S. 682, 685 note 3 (1949); *Land* v. *Dollar*, 330 U. S. 731, 734 note 2 (1947).

Petitioner prays that the writ be granted for all of the reasons herein presented.

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APPENDIX A

Opinion of the United States Court of Appeals

UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 15606

FIAT MOTOR COMPANY, INC., APPELLANT

v.

ALABAMA IMPORTED CARS, INC., APPELLEE

Appeal from the United States District Court
for the District of Columbia

Decided May 25, 1961

Mr. Edward Garfield, of the bar of the Court of Appeals of New York, *pro hac vice*, by special leave of court, with whom *Mr. Malcolm S. Langford* was on the brief, for appellant.

Mr. John F. Mahoney, Jr., with whom *Messrs. Charles E. Pledger, Jr.*, and *Justin L. Edgerton* were on the brief, for appellee.

Before WILBUR K. MILLER, *Chief Judge*, and BAZELON and BURGER, *Circuit Judges*.

BURGER, *Circuit Judge*: Appellant (Fiat) is a New York corporation with its principal place of business in New York City. It imports Fiat automobiles and sells them to

wholesale distributors, among which is the Roosevelt Automobile Company (Roosevelt), a Delaware corporation with its principal place of business in the District of Columbia. The appellee, Alabama Imported Cars, Inc. (Alabama) is an Alabama corporation and a dealer under a sales agreement. Appellee instituted this suit under the Automobile Dealers' Franchise Act, 15 U.S.C. §§ 1221-25 (1958) against Fiat and Roosevelt as co-defendants and purported to accomplish service on Fiat by service upon the president of Roosevelt in the District. Fiat's motion to quash service was denied and this appeal from the interlocutory order was certified under 28 U.S.C. § 1292(b) (1958).

The lengthy "Distributor Sales Agreement" to which Fiat and Roosevelt are parties provides that Roosevelt is an authorized distributor of Fiat motor vehicles, parts and equipment for the District of Columbia and nine southeastern states.[1] Roosevelt is obligated under the agreement to promote the sales of Fiat products vigorously and aggressively, to use advertising materials[2] provided by Fiat, to establish and equip "to the satisfaction of Fiat" places of business in the District of Columbia and Florida, to maintain those locations in good condition, and to change such locations only with the prior consent of Fiat. The contract also requires Roosevelt to keep and furnish to Fiat upon request, such records and reports as Fiat shall require, to maintain certain stated working capital and net worth, to employ personnel in certain stated capacities and to insure their attendance at Fiat training schools. Particularly significant in view of the issue in this litigation is Fiat's express power over Roosevelt's designation of local Fiat dealers in the area.

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[1] Although the contract does not in terms grant Roosevelt the exclusive right to distribute Fiat products in this area, it appears that in practice Roosevelt is the sole distributor covering the area.

[2] We note that the record shows that Roosevelt is listed under "Fiat" in the telephone book. *Cf.* Maryland *Ex Rel.* Chrysler v. Eastern Air Lines, Inc., 81 F. Supp. 345 (D.D.C. 1948).

These and other provisions of the agreement manifest a continuing business relationship involving the supervision and control by Fiat of numerous details of the Roosevelt business. The theory of appellee's complaint is that Roosevelt and Fiat, through their control over dealerships, did not afford appellee's franchise the good faith treatment required by the Dealers' Act under which suit is brought. Thus, the cause of action upon which the suit is based arises from the relationship between Fiat and Roosevelt and provisions of their agreement. In our view this relationship subjects Fiat to service in the District whether that issue is considered to be governed by federal or local standards.[3]

Assuming that in the absence of controlling federal statute[4] the matter is governed by the standards of "fair play and substantial justice,"[5] *Lone Star Package Car Co.* v. *Baltimore & O. R. Co.*, 212 F.2d 147 (5th Cir. 1954), the contacts of Fiat with the District are of such substantial, continuing, and directory nature as to warrant the holding that it is doing business here in a manner which makes it subject to service of process in this jurisdiction. *McGee* v. *International Life Ins. Co.*, 355 U.S. 220 (1957); *Florio* v. *Powder Power Tool Corp.*, 248 F.2d 367 (3d Cir. 1957); *cf. Scholnik* v. *National Airlines, Inc.*, 219 F.2d 115 (6th Cir. 1955). On the other hand, if local law governs, Fiat is subject to service in the District under our decision in *Carroll Electric Co.* v. *Freed-Eisemann Radio Corp.*, 60 App.D.C. 228, 50 F.2d 993 (1931). See also *Frene* v. *Louisville Cement Co.*, 77 U.S.App.D.C. 129, 134 F.2d 511 (1943).

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[3] Compare the majority and dissenting opinions in Jaftex Corp. v. Randolph Mills, Inc., 282 F. 2d 508 (2d Cir. 1960).

[4] *Cf.* Fourco Glass Co. v. Transmira Prods. Corp., 353 U.S. 222 (1957).

[5] International Shoe Co. v. Washington, 326 U.S. 310, 320 (1945).

Appellant contends that even if it is subject to service in the District, service was not effected in a proper manner under the Rules. We agree with appellant that the president of Roosevelt was not "an officer, a managing or general agent" as described in Rule 4(d)(3), FED. R. CIV. P., upon whom service could be made. But Rule 4 (d)(7) allows service in the manner prescribed by local law.[6] D. C. Code § 13-103 (1951) provides that "in actions against foreign corporations doing business in the District all process may be served on the agent of such corporation or person conducting its business."[7] The latter phrase is broad enough to include the president of Roosevelt, for the import of the provision is that service must be made upon one who "occupies such a responsible representative status as to make it reasonably certain that he will turn over the process" to those called upon to answer. *Atome Eng'rs, Inc.* v. *Foster Eng'r Co.*, 254 F.2d 259, 263 (5th Cir. 1958).

Since the District Court had power to subject Fiat to service in the District and the service was made in an authorized manner, the court correctly denied the motion to quash service.

Affirmed.

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[6] See Rule 81(e), FED. R. CIV. P.

[7] Since appellant has a continuing contact with the District, it is subject to service under the first paragraph of D. C. Code § 13-103 (1951), and we need not consider questions raised with respect to the limitations which the second paragraph of that section imposes upon service upon corporations whose contact with the District is "casual and irregular." See Goldberg v. Southern Builders, Inc., 87 U.S. App. D.C. 191, 184 F. 2d 345 (1950).

APPENDIX B

Text of Statutes and Rules Involved

1. Automobile Dealers' Day in Court Act, 70 Stat. 1125 (1956), 15 U.S.C. § 1221 *et seq.*

An Act to supplement the antitrust laws of the United States, in order to balance the power now heavily weighted in favor of automobile manufacturers, by enabling franchise automobile dealers to bring suit in the district courts of the United States to recover damages sustained by reason of the failure of automobile manufacturers to act in good faith in complying with the terms of franchises or in terminating or not renewing franchises with their dealers.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That:

As used in this Act—

(a) The term "automobile manufacturer" shall mean any person, partnership, corporation, association, or other form of business enterprise engaged in the manufacturing or assembling of passenger cars, trucks, or station wagons, including any person, partnership, or corporation which acts for and is under the control of such manufacturer or assembler in connection with the distribution of said automotive vehicles.

(b) The term "franchise" shall mean the written agreement or contract between any automobile manufacturer engaged in commerce and any automobile dealer which purports to fix the legal rights and liabilities of the parties to such agreement or contract.

(c) The term "automobile dealer" shall mean any person, partnership, corporation, association, or other form of business enterprise resident in the United States or in any Territory thereof or in the District of Columbia operat-

ing under the terms of a franchise and engaged in the sale or distribution of passenger cars, trucks, or station wagons.

(d) The term "commerce" shall mean commerce among the several States of the United States or with foreign nations, or in any Territory of the United States or in the District of Columbia, or among the Territories or between any Territory and any State or foreign nation, or between the District of Columbia and any State or Territory or foreign nation.

(e) The term "good faith" shall mean the duty of each party to any franchise, and all officers, employees, or agents thereof to act in a fair and equitable manner toward each other so as to guarantee the one party freedom from coercion, intimidation, or threats of coercion or intimidation from the other party: Provided, That recommendation, endorsement, exposition, persuasion, urging or argument shall not be deemed to constitute a lack of good faith. [15 U.S.C. § 1221]

Sec. 2. An automobile dealer may bring suit against any automobile manufacturer engaged in commerce, in any district court of the United States in the district in which said manufacturer resides, or is found, or has an agent, without respect to the amount in controversy, and shall recover the damages by him sustained and the cost of suit by reason of the failure of said automobile manufacturer from and after the passage of this Act to act in good faith in performing or complying with any of the terms or provisions of the franchise, or in terminating, canceling, or not renewing the franchise with said dealer: Provided, That in any such suit the manufacturer shall not be barred from asserting in defense of any such action the failure of the dealer to act in good faith. [15 U.S.C. § 1222]

Sec. 3. Any action brought pursuant to this Act shall be forever barred unless commenced within three years after the cause of action shall have accrued. [15 U.S.C. § 1223]

Sec. 4. No provision of this Act shall repeal, modify, or supersede, directly or indirectly, any provision of the antitrust laws of the United States. [15 U.S.C. § 1224]

Sec. 5. This Act shall not invalidate any provision of the laws of any State except insofar as there is a direct conflict between an express provision of this Act and an express provision of State law which can not be reconciled. [15 U.S.C. § 1225]

Approved August 8, 1956.

2. Clayton Act § 4, 38 Stat. 731 (1914), 15 U.S.C. § 15.

Suits by persons injured; amount of recovery.

Any person who shall be injured in his business or property by reason of anything forbidden in the antitrust laws may sue therefor in any district court of the United States in the district in which the defendant resides or is found or has an agent, without respect to the amount in controversy, and shall recover threefold the damages by him sustained, and the cost of suit, including a reasonable attorney's fee.

3. Clayton Act § 12, 38 Stat. 736 (1914), 15 U.S.C. § 22.

District in which to sue corporation.

Any suit, action, or proceeding under the antitrust laws against a corporation may be brought not only in the judicial district whereof it is an inhabitant, but also in any district wherein it may be found or transacts business; and all process in such cases may be served in the district of which it is an inhabitant, or wherever it may be found.

4. Sherman Act § 7, 26 Stat. 210 (1890).

Suits by persons injured; amount of recovery.

Any person who shall be injured in his business or property by any other person or corporation by reason of any-

thing forbidden or declared to be unlawful by this act, may sue therefor in any circuit court of the United States in the district in which the defendant resides or is found, without respect to the amount in controversy, and shall recover threefold the damages by him sustained, and the costs of suit, including a reasonable attorney's fee.

5. 28 U.S.C. § 1391 (c) (1948).

Venue generally.

. . .

(c) A corporation may be sued in any judicial district in which it is incorporated or licensed to do business or is doing business, and such judicial district shall be regarded as the residence of such corporation for venue purposes.

6. D. C. Code, tit. 13, § 13-103 (1951).

Service on foreign corporations.

In actions against foreign corporations doing business in the District all process may be served on the agent of such corporation or person conducting its business, or, in case he is absent and can not be found, by leaving a copy at the principal place of business in the District, or, if there be no such place of business, by leaving the same at the place of business or residence of such agent in said District, and such service shall be effectual to bring the corporation before the court.

When a foreign corporation shall transact business in the District without having any place of business or resident agent therein, service upon any officer or agent or employee of such corporation in the District shall be effectual as to suits growing out of contracts entered into or to be performed, in whole or in part, in the District of Columbia or growing out of any tort committed in the said District.

7. Federal Rules of Civil Procedure, Rule 4.

PROCESS

• • •

(d) *Summons: Personal Service.* The summons and complaint shall be served together. The plaintiff shall furnish the person making service with such copies as are necessary. Service shall be made as follows:

. . .

(3) Upon a domestic or foreign corporation or upon a partnership or other unincorporated association which is subject to suit under a common name, by delivering a copy of the summons and of the complaint to an officer, a managing or general agent, or to any other agent authorized by appointment or by law to receive service of process and, if the agent is one authorized by statute to receive service and the statute so requires, by also mailing a copy to the defendant.

• • •

(7) Upon a defendant of any class referred to in paragraph (1) or (3) of this subdivision of this rule, it is also sufficient if the summons and complaint are served in the manner prescribed by any statute of the United States or in the manner prescribed by the law of the state in which the service is made for the service of summons or other like process upon any such defendant in an action brought in the courts of general jurisdiction of that state.

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APPENDIX C

Judgment Sought to be Reviewed

UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT

September Term, 1960

Civil 3272-58

No. 15,606

FIAT MOTOR COMPANY, INC., *Appellant,*

v.

ALABAMA IMPORTED CARS, INC., *Appellee.*

Appeal from an Interlocutory Order of the United States District Court for the District of Columbia.

Before: Wilbur K. Miller, Chief Judge, and Bazelon and Burger, Circuit Judges.

Judgment

This cause came on to be heard on the record on appeal from the United States District Court for the District of Columbia, and was argued by counsel.

ON CONSIDERATION WHEREOF, it is ordered and adjudged by this court that the order of the District Court appealed from in this cause is affirmed.

It is further ORDERED by the court that appellee herein recover from appellant its taxable costs on this appeal, and have execution therefor.

Per Circuit Judge Burger.

Dated: May 25, 1961